UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office
9721 Executive Center Drive North
St. Petersburg, Florida 33702-2432

October 21, 2002

Colonel James G. May
District Engineer, Jacksonville District
Regulatory Division, South Permits Branch
Department of the Army, Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32232-0019

Dear Colonel May:

This responds to your September 2002, request for comments on the Draft Supplemental Environmental Impact Statement (DSEIS) regarding the proposed Phipps Ocean Park Beach Restoration Project in Palm Beach County, Florida. We note that Appendix D of the document contains the Essential Fish Habitat (EFH) Assessment for the project as required in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). In connection with our review of the project, as advertised in public notice number **200000380 (IP-DSG)**, the National Marine Fisheries Service (NOAA Fisheries) has previously recommended against authorization of the proposed action and provided notice, pursuant to Part IV, paragraph 3(a) of our Clean Water Act 404 (q) Memorandum of Agreement (MOA), that a higher level review may be sought in this matter. We determined that unacceptable impacts to EFH, Habitat Areas of Particular Concern (HAPC), and other NOAA Fisheries-trust resources are possible in conjunction with the proposed action.

According to the project description, the proposed first time nourishment of Phipps Ocean Park Beach would involve placing 1.5 million cubic yards of sand along 1.9 miles of shoreline. Two borrow areas located 1.5 and 2.6 miles south of Phipps Ocean Park Beach and 3500 feet offshore, would be used. Sand would be dredged from the borrow areas using a hydraulic dredge and pumped to the beach via submerged pipeline.

The DEIS also states that the Phipps Ocean Park Beach restoration project is necessary to correct severe shoreline erosion caused by interruption of sand movement across Lake Worth Inlet. If unabated, ongoing erosion is expected to further diminish the value of the existing beach which serves as a public recreation area and provides shoreline habitat for marine life, avifauna and other wildlife. The project would restore and maintain the beach, provide storm protection for upland structures and infrastructure, and compensate for long-term erosional impacts associated with Lake Worth Inlet stabilization (by jetties).

The project area includes areas identified as EFH by the South Atlantic Fishery Management Council (SAFMC) including marine water column, live/hardbottoms, coral and coral reefs, algae, and sargassum. Managed species associated with the marine water column include eggs and sub-adult brown and pink shrimp; gag and yellowedge grouper; gray, mutton, lane, and schoolmaster snappers; and white grunt. The marine water column and sargassum also have been identified as EFH for pelagic species, including sub-adult/juvenile king and Spanish mackerel, greater amberjack, cobia, and dolphin. Hardbottom/coral reef habitats have been identified as EFH for juvenile and adult gag and yellowedge groupers, and gray and mutton snappers. Sponge, algae, coral, and hardbottom habitats have been identified as EFH for juvenile and adult spiny lobster. The Mid-Atlantic Fishery Management Council (MAFMC) also has identified EFH for bluefish, including water column located between the coastline to well beyond the construction limits of the project. NOAA Fisheries has also identified the marine water column as EFH for highly migratory species including juvenile and adult nurse, lemon, blacktip, great hammerhead, sandbar, and bull sharks.

Detailed information on shrimp, the snapper/grouper complex (containing ten families and 73 species), mackerel, bluefish, dolphin, spiny lobster, and other Federally managed fisheries and their EFH is provided in the 1998 generic amendment of the Fishery Management Plans (FMP) for the South Atlantic and Mid Atlantic regions prepared by the SAFMC and MAFMC, respectively. The 1998 amendment was prepared as required by the MSFCMA. Finally, in this regard, we note that the SAFMC has designated hardbottom habitat as an HAPC for the snapper/grouper complex and spiny lobster, and sargassum as an HAPC for highly migratory pelagic species. HAPCs are subsets of EFH that are rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area.

In addition to EFH for Federally managed species, the marine water column, sargassum, hardbottom, coral, and shallow nearshore habitats provide nursery, foraging, and/or refuge habitat for other commercially and recreationally important fish and shellfish. Species such as blue crab, flounder, Florida pompano, striped mullet, tarpon, and a variety reef fish and tropical fish are among the many species that utilize these habitats.

The section of the beach located between R-116 and R-126 as shown in the DSEIS has never been nourished. Historical erosion data provided in the DSEIS, show that the majority of the shoreline located between DEP monuments R-116 and R-126 has either accreted or remained stable since 1974. Only two areas near monuments R-116 and R-117 have experienced significant erosion. Based on this, we concur with determination by the U.S. Fish and Wildlife Service, as provided in their May 5, 2000, report, that the placement of sand over the nearshore hardbottom in these locations could undermine the natural protection that these reefs provide. Based upon our assessment of the proposed project, (and as stated in our letter dated September 27, 2001), limited erosion occurring along small sections of the beach does not appear adequate to justify nourishment of the entire 1.9 miles of shoreline. Furthermore, the project does not address the blockage of littoral sand drift across Lake Worth Inlet, which is apparent cause of erosion at Phipps Ocean Park Beach.

The EFH Assessment and related information contained in the DSEIS provides a reasonably complete description of EFH functions and project related impacts to EFH. The assessment concludes that habitat functional value reductions involving nearshore hardbottom communities would be offset by establishment of similar replacement habitat. NOAA Fisheries finds that this determination does not adequately consider the project's proximity to Lake Worth Inlet and the role of existing nearshore hardbottom habitat as a recruitment site for larval and juvenile nearshore fishes. The determination, as provided in the DSEIS, that a more stable offshore reef may provide refuge for nearshore fish is unsubstantiated since the ecological functions of reefs found at varying distances from shore may differ considerably.

The DSEIS also acknowledges that direct and secondary effects of turbidity and sedimentation to coral reefs and local fisheries is possible. Although the project plans call for utilization of best management practices in order to minimize sedimentation and turbidity, the potential for significant adverse impacts exists and additional mitigation may be needed to compensate for these impacts. In the absence of a mitigation plan that addresses reasonably anticipated impacts, additional impact monitoring, as needed to detect damage caused by turbidity and sedimentation, is needed.

Although NOAA Fisheries believes that a long-term solution is needed for disruption of littoral sand drift caused by stabilization of Lake Fort Worth Inlet, we are not opposed to implementing temporary shoreline protection measures that would not result in significant environmental harm. However, we request that state and local governments, in consultation with the Jacksonville District, undertake evaluation of a long-term plan to address sand transfer across the inlet and that efforts be examined to conserve, protect, and enhance reefs and other important habitats found in the area.

In view of the potential adverse effects of this project to EFH and living marine resources, NOAA Fisheries provides the following recommendations:

EFH Conservation Recommendations

1. Planned construction of a replacement reef at least six months in advance of project implementation (beach nourishment) is necessary to address loss of reef function. To compensate for delay, if any, in initiation of replacement reef construction the applicant shall be required to build an additional 0.30 acre of replacement reef for each 30 day period in which reef construction falls short of the established six month advance period. This requirement shall be invoked for any portion of a successive 30 day period.

2. Continuous monitoring of the dredging and disposal activities shall be performed to ensure that all environmental safeguards are met and work is limited to designated locations. Work shall be immediately terminated if compliance with environmental protection requirements are not met, unforeseen significant environmental damage is observed, or work occurs outside of established work sites.

3. Prior to project implementation the applicant shall evaluate the feasibility of limiting beach nourishment to the immediate vicinity of monuments R-116 and R-117 where significant erosion has occurred. The results of this evaluation shall be provided to the Corps of Engineers for consideration and possible implementation.

4. A monitoring plan shall be developed to determine the effectiveness of the proposed artificial reef. The plan shall effectively monitor the stability of the reef and the composition and distribution of associated biota. Particular emphasis shall be placed on comparative utilization by fish life history stages with regard to materials used in reef construction (natural rock vs. concrete), location relative to distance from the beach, and water depth.

Section 305(b)(4)(B) of the Magnuson-Stevens Act and NOAA Fisheries implementing regulation at 50 CFR Section 600.920(k) require your office to provide a written response to this letter within 30 days of its receipt. If it is not possible to provide a substantive response within 30 days, in accordance with our findings with the your Regulatory Functions Branch, an interim response should be provided to NOAA Fisheries. A detailed response then must be provided prior to final approval of the action. Your detailed response must include a description of measures proposed by your agency to avoid, mitigate, or offset the adverse impacts of the activity. If your response is inconsistent with our EFH Conservation Recommendations, you must provide a substantive discussion justifying the reasons for not following the recommendations.

The project area includes known distribution limits of Federally listed threatened species that are under purview of NOAA Fisheries. In accordance with the Endangered Species Act of 1973, as amended, it is the responsibility of the appropriate Federal regulatory agency to review its activities and programs and identify any activity or program that may affect endangered or threatened species or their habitat. Determinations involving species under NOAA Fisheries jurisdiction should be reported to our Protected Resources Division (PRD) at the letterhead address. If it is determined that the activities may adversely affect any species listed as endangered or threatened and under PRD purview, then formal consultation must be initiated.

Finally, in an effort to move forward with project authorization, NOAA Fisheries concludes that incorporation of the above listed EFH Conservation Recommendations into the Department of the Army permit for the project would resolve our concerns and no further action relevant to our elevation options involving the MSFCMA or Section 404(q) of the Clean Water Act would be pursued.

We appreciate the opportunity to provide these comments. Please direct related questions or comments to the attention of Ms. Jocelyn Karazsia at our Miami Office. She may be reached at 11420 North Kendall Drive, Suite #103, Miami, Florida 33176, or by telephone at (305) 595-8352.

Sincerely,

David H. Bukley

for

Andreas Mager, Jr.
Assistant Regional Administrator
Habitat Conservation Division

cc:
EPA, WPB
DEP, WPB
FFWCC, TAL
FWS, VERO
F/SER4
F/SER45-Karazsia
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SAFMC, Pugliese